practical matter cannot generally be satisfactorily severed for purposes of foreclosure. Nevertheless, the result of the minority doctrine is preferable in that it gives priority to the one who has added value to the property to the extent of that increment without diminishing the original interest of the doweress. This is not inconsistent with the general theory of mechanics' liens, for as to improvements dower at most attaches simultaneously with the lien. Nevertheless courts persist in an often irrational protection of the doweress.

ELECTIONS—ELIGIBILITY FOR OFFICE—MANDAMUS TO COMPEL PRINTING OF NAMES ON BALLOTS.—The Workers' League nominated for Mayor and President of the Board of Aldermen of New York City two men convicted of criminal anarchy, whose sentences were not to expire until after the term of office began. The League's committee filed certificates, valid on their face, to fill vacancies, and when the Board refused to act, an application was made to mandamus the Board of Elections to print the names on the ballots. *Held,* the Appellate Division's refusal to grant the writ of mandamus was in the exercise of a reasonable discretion. *Application of Lindgren* (1921) 232 N.Y.59, 133 N. E. 353.

Mandamus will issue in proper circumstances against election officials to compel them to act. *People* v. *Hartley* (1897) 170 Ill. 370, 48 N. E. 950; *People* v. *Dooling* (1910) 141 App. Div. 29, 127 N. Y. Supp. 748. But even though a Board of Elections has a clear ministerial duty to print names on the ballot on the filing of a certificate valid on its face, or to issue certificates of election, courts in their discretion will not compel performance of such acts, if their final effect would be a nullity. *People* v. *Board of Canvassers* (1891) 129 N. Y. 360, 29 N. E. 345; *Clarke* v. *Trenton* (1887) 49 N. J. L. 349, 8 Atl. 509. There is no provision in the New York law preventing a convict from being nominated for office. But he is ineligible to hold office while imprisoned. N. Y. Cons. Laws (1909) c. 40, § 510. The court in the instant case reached their decision on the ground that since the object of election machinery was to elect men eligible to hold office, they would not by mandamus compel a useless act. The opinion did not consider the question of the policy of a protest vote. Moreover, the applicant is asserting his own and not the nominee's civil rights, and since the Election Law contains no prohibition against the candidacy of a convict, it is questionable whether the court's main premise was warranted. It was a doubtful exercise of discretion for the Appellate Division to deny the mandamus when the concurrence of election and pardon, no matter how remote the possibility, before the term of office, would make the nomination anything but futile. The opinion did not discuss pardon.

INSURANCE—PUBLIC AS BENEFICIARY—BREACH OF CONDITION BY INSURED.—A statute required every jitney bus operator to carry indemnity insurance for the benefit of persons injured by the bus, and required the policy to provide for the payment of judgments obtained against the operator. The plaintiff sued to recover the amount of a judgment obtained against an operator thus insured by the defendant company. The operator had breached a condition in the policy. *Held,* for the plaintiff. *Bayle* v. *Manufacturers' Liability Ins. Co.* (N. J. 1921) 115 Atl. 383.

The beneficiary of an insurance policy cannot recover if it has become void by the insured's breach of condition. So in the case of a life insurance policy a breach of condition by the insured prevents a recovery by the beneficiary, even if her interest was vested before the breach. *Behling* v. *N. W. Nat. Life Ins. Co.* (1903) 117 Wis. 24, 93 N. W. 800. And where a mortgagor insures the property for the benefit of the mortgagee a breach of condition by the former defeats the right of the latter. *Merwin* v. *Star Fire Ins. Co.* (1876) 7 Hun 659, *aff'd* (1878) 72 N. Y. 603; see *City Five Cents Savings Bk.* v. *Pennsylvania Ins. Co.* (1877)

122 Mass. 165, 167. But if the policy expressly provides that the beneficiary shall recover regardless of a breach of condition by the insured, such a breach obviously does not prevent the beneficiary from recovering. *Gillard* v. *Manufacturers' Ins. Co.* (1919) 93 N. J. L. 215, 107 Atl. 446; *Oakland Home Ins. Co.* v. *Bank of Commerce* (1896) 47 Neb. 717, 66 N. W. 646. The New Jersey court has sought to secure for the travelling public the full security the legislature sought to give. See *Gillard* v. *Manufacturers' Casualty Ins. Co.* (1918) 92 N. J. L. 141, 143, 144, 104 Atl. 707. To do this in the instant case it was necessary to disregard the expressed condition in the policy and in effect hold the defendant liable on a contract it did not make. As the insurance company had issued a policy on which the public relied, in permitting the insured to operate the bus, such a decision is the more readily justified. This case illustrates the recent tendency away from legalistic formalism.

JURY—SEPARATION IN A CAPITAL CASE.—The defendant was indicted for murder. During the trial, the court permitted the jury to separate. The defendant was convicted. On appeal, *held,* conviction affirmed. The action of the court will not be reviewed unless it appears affirmatively that prejudice resulted to the defendant. *McHenry* v. *United States* (D. C. Dist. Col. 1921) 49 Wash. Law Rep. 771.

At early common law the separation of the jury in a capital case during the trial was error warranting a new trial or reversal of judgment. See *State* v. *Cucuel* (1865) 31 N. J. L. 249, 252. There is no separation if the jury is under the supervision of the court or of its sworn officers. *State* v. *Cucuel, supra.* It has been held that separation, even with the consent of the defendant, vitiates a conviction in a capital case, prejudice to the defendant being conclusively presumed. *Woods* v. *State* (1871) 43 Miss. 364. The weight of authority, however, leaves it within the court's discretion as to whether the jury be allowed to separate during the trial of a felony punishable by death. *Holt* v. *United States* (1910) 218 U. S. 245, 31 Sup. Ct. 2; *Stephens* v. *The People* (1859) 19 N. Y. 549; *State* v. *Williams* (1905) 96 Minn. 351, 105 N. W. 265. The action of the court is not error unless it has abused its discretion. See *Holt* v. *United States, supra,* 251. The burden is on the defendant to show that the jurors were improperly influenced by the separation. *Reeves* v. *The State* (1907) 84 Ark. 569, 106 S. W. 945. An unauthorized separation, in the absence of prejudice to the defendant, is not ground for reversal. *Commonwealth* v. *Cressinger* (1897) 193 Pa. St. 326, 44 Atl. 433. The burden is on the prosecution to show that the defendant was not prejudiced. *Gamble* v. *The State* (1902) 44 Fla. 429, 33 So. 471; *contra, People* v. *Bemmerly* (1893) 98 Cal. 299, 33 Pac. 263. In many states statutes permit or prohibit the separation of the jury in a capital case. Mich. Comp. Laws (1915) § 15833 (permitting); Ky. Code Crim. Proc. (Carroll 1909) § 244 (prohibiting). The rigor of the common law was motivated by the desire both to keep the jury from outside influence and to compel them to reach a verdict. The latter policy has now been abandoned and the rule laid down in the instant case is adequate to secure the former.

LIBEL AND SLANDER—PRIVILEGE—NEWSPAPER—"SLACKER LIST."—The defendant newspaper at the request of the War Department published a "slacker list" which included the plaintiff's name. The plaintiff had not evaded the Draft Law and sued the defendant for libel. The defendant demurred to the complaint, claiming that the publication was absolutely privileged. The court overruled the demurrer, stating that the defendant's privilege, if any, was only conditional. *Hyman* v. *Press Publishing Company* (App. Div. 1st Dept. 1922) 192 N. Y. Supp. 47.

Important executive government officials are absolutely privileged while discharging their official duties. *Spalding* v. *Vilas* (1896) 161 U. S. 483, 16 Sup. Ct.